



Signed and Filed: August 8, 2022

A handwritten signature in black ink, appearing to read "Hannah L. Blumenstiel", is written over a horizontal line.

HANNAH L. BLUMENSTIEL
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

In re:)	Case No. 19-31024 HLB
)	
RICHARD TOM,)	Chapter 7
)	
Debtor.)	
)	
MARK NG, KENDALL NG, and)	
LORAIN WONG,)	Adv. Proc. No. 19-3065 HLB
)	
Plaintiffs,)	
)	
v.)	
)	
RICHARD TOM,)	
)	
Defendant.)	
)	

ELEVENTH ORDER REGARDING DISCOVERY DISPUTE

On June 8, 2022, the court issued its Seventh Order Regarding Discovery Dispute.¹ The Seventh Order required Defendant Richard Tom and Ms. Kenesha Fudge to provide the court with "an accurate email address for Ms. Bonita Miller" no later than June 15, 2022. Mr. Tom and/or Ms. Fudge had designated Ms. Miller as a witness for entities Green Oasis L.P. ("GOLP") and Pacific Golden Asia LLC ("PGA") under Civil Rule 30(b)(6) and

¹ Dkt. 108 (the "Seventh Order").

1 Bankruptcy Rule 7030² pursuant to this court's Third Order
2 Regarding Discovery Dispute, entered March 31, 2022.³ The Third
3 Order also required GOLP and PGA to make their newly designated
4 witness available for deposition on or prior to May 31, 2022.

5 After receiving the Third Order, Mr. Tom and Ms. Fudge
6 designated Ms. Miller as GOLP and PGA's Civil Rule 30(b)(6)
7 witness, but failed to provide Plaintiffs' counsel with any
8 contact information for Ms. Miller. This prompted the issuance
9 of the Seventh Order.

10 Mr. Tom and Ms. Miller failed to comply with the Seventh
11 Order, which forced the court to issue an Order to Show Cause Re:
12 Contempt and Sanctions on June 21, 2022.⁴ The First OSC warned
13 that the court would hold respondents in contempt and would
14 impose discovery and/or contempt sanctions against them if they
15 failed to respond by July 1, 2022. The court ordered that any
16 such response must include current, accurate street and email
17 addresses for Ms. Miller.

18 Defendant Richard Tom responded to the First OSC on June 22,
19 2022.⁵ Mr. Tom claims not to know Ms. Miller and claims not to
20 have any contact information for her. He asks the court to
21 direct its request to Ms. Fudge.

24 ² Unless otherwise indicated, all citations to a "Civil Rule" shall refer to
25 one of the Federal Rules of Civil Procedure and all citations to a "Bankruptcy
Rule" shall refer to one of the Federal Rules of Bankruptcy Procedure.

26 ³ Dkt. 78 (the "Third Order").

27 ⁴ Dkt. 120 (the "First OSC").

28 ⁵ Dkt. 122.

1 Ms. Fudge responded to the First OSC on June 30, 2022.⁶ The
2 first page of Ms. Fudge's response sets forth a telephone number,
3 an email address, and a street address that Ms. Fudge attributes
4 to Ms. Miller. The next page of Ms. Fudge's response consists of
5 a short letter, which indicates that she emailed Ms. Miller's
6 contact information to Plaintiffs' counsel on June 26, 2022,
7 weeks after that information was required by the Seventh Order.
8 Ms. Fudge appears to suggest that her health problems prevented
9 her from timely complying with the Seventh Order (although she by
10 no means states that directly), as she attaches to her letter (in
11 violation of the First OSC's instructions not to submit exhibits
12 with any response) two documents which appear to pertain to
13 emergency room visits Ms. Fudge made on June 30, 2022 and May 7,
14 2022.

15 On July 14, 2022, the court received yet another letter from
16 Plaintiffs' counsel. This letter represents that Ms. Miller
17 appeared on July 14, 2022 for deposition as GOLP's representative
18 under Civil Rule 30(b)(6). According to Plaintiff's counsel, Ms.
19 Miller testified that she had no knowledge of any of the 27
20 topics set forth in the relevant subpoena, had not read the
21 subpoena, and had no familiarity with GOLP, its operations, or
22 its financial affairs. Plaintiffs' counsel argues that, by
23 designating and producing a witness wholly unprepared to answer
24 questions, GOLP and PGA have failed to comply with the Third
25 Order.

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28 ⁶ Dkt. 130.

1 Plaintiffs' counsel renewed their request for designation of
2 a competent witness under Civil Rule 30(b)(6), demanded
3 permission to file a motion for contempt and sanctions (ignoring
4 the First OSC), and demanded that the court suspend all discovery
5 deadlines.

6 On July 15, 2022, the court received a response to
7 Plaintiffs' counsel's July 14 Letter from Ms. Fudge. Ms. Fudge
8 accuses Plaintiffs' counsel of harassment and oppression and
9 argues that the discovery that Plaintiffs seek is unnecessary and
10 that she has tried repeatedly to provide Plaintiffs with the
11 information they seek. Ms. Fudge claims that, prior to Ms.
12 Miller's deposition, she prepared and reviewed with Ms. Miller a
13 spreadsheet reflecting GOLP's income and expenses, along with
14 information pertaining to the current tenants at the building
15 owned in part by GOLP.

16 The descriptions of Ms. Miller's preparedness offered by
17 Plaintiffs' counsel and by Ms. Fudge differ dramatically, and on
18 the current record, the court has no ability to determine whose
19 version of the story is accurate. It also appears that Mr. Tom
20 and Ms. Fudge have finally complied with the Seventh Order, and
21 that the First OSC can be vacated. Accordingly, the court **ORDERS**
22 as follows:

23 **1.** The First OSC is hereby **VACATED**.

24 **2.** No later than **August 19, 2022**, Plaintiffs' counsel
25 shall file a declaration introducing and authenticating a
26 complete copy of the transcript from Ms. Miller's July 14
27 deposition as GOLP's witness under Civil Rule 30(b)(6).
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1 **3.** After reading the deposition transcript, the court will
2 issue a further order.

3 **4.** Neither Ms. Fudge nor Plaintiffs shall transmit to the
4 court or file any additional or supplemental materials relating
5 to this discovery dispute absent prior leave of court.

6 **5.** Failure to timely or fully comply with this order shall
7 result in the imposition of sanctions.

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10 ****END OF ORDER****
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Court Service List

Kenesha Fudge
103 Benji Court
Meridianville, AL 35759

Bonita Miller
912 Winchester Road, Suite 2
Huntsville, AL 35811